

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2222

Introduced by Assembly Member Nazarian

February 20, 2014

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, as amended, Nazarian. Housing density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

Existing law requires continued affordability for 30 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus.

This bill instead would require continued affordability for 55 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus. This bill also would prohibit an applicant from receiving a density bonus unless the proposed housing development would maintain the number and proportion of affordable housing units on parcels included within the proposed development.

~~This bill would declare the intent of the Legislature to enact legislation relating to density bonuses.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:
3 65915. (a) When an applicant seeks a density bonus for a
4 housing development within, or for the donation of land for housing
5 within, the jurisdiction of a city, county, or city and county, that
6 local government shall provide the applicant with incentives or
7 concessions for the production of housing units and child care
8 facilities as prescribed in this section. All cities, counties, or cities
9 and counties shall adopt an ordinance that specifies how
10 compliance with this section will be implemented. Failure to adopt
11 an ordinance shall not relieve a city, county, or city and county
12 from complying with this section.
13 (b) (1) A city, county, or city and county shall grant one density
14 bonus, the amount of which shall be as specified in subdivision
15 (f), and incentives or concessions, as described in subdivision (d),
16 when an applicant for a housing development seeks and agrees to
17 construct a housing development, excluding any units permitted
18 by the density bonus awarded pursuant to this section, that will
19 contain at least any one of the following:
20 (A) Ten percent of the total units of a housing development for
21 lower income households, as defined in Section 50079.5 of the
22 Health and Safety Code.
23 (B) Five percent of the total units of a housing development for
24 very low income households, as defined in Section 50105 of the
25 Health and Safety Code.
26 (C) A senior citizen housing development, as defined in Sections
27 51.3 and 51.12 of the Civil Code, or mobilehome park that limits
28 residency based on age requirements for housing for older persons
29 pursuant to Section 798.76 or 799.5 of the Civil Code.
30 (D) Ten percent of the total dwelling units in a common interest
31 development as defined in Section 4100 of the Civil Code for
32 persons and families of moderate income, as defined in Section
33 50093 of the Health and Safety Code, provided that all units in the
34 development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, “total units” or “total dwelling units” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for ~~30~~ 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller’s proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which dwelling units have, at any time in the five-year period preceding the application, been occupied by lower or very low income households, been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income, or been subject to any other form of rent or price control through a public entity's valid exercise of its police power, unless the proposed housing development includes at least the same number of units to be made available for rent at affordable housing costs to, and occupied by, persons and families in the same or lower income category in the same proportion as the existing affordable units.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment

1 or on any real property that is listed in the California Register of
2 Historical Resources and for which there is no feasible method to
3 satisfactorily mitigate or avoid the specific adverse impact without
4 rendering the development unaffordable to low- and
5 moderate-income households.

6 (C) The concession or incentive would be contrary to state or
7 federal law.

8 (2) The applicant shall receive the following number of
9 incentives or concessions:

10 (A) One incentive or concession for projects that include at least
11 10 percent of the total units for lower income households, at least
12 5 percent for very low income households, or at least 10 percent
13 for persons and families of moderate income in a common interest
14 development.

15 (B) Two incentives or concessions for projects that include at
16 least 20 percent of the total units for lower income households, at
17 least 10 percent for very low income households, or at least 20
18 percent for persons and families of moderate income in a common
19 interest development.

20 (C) Three incentives or concessions for projects that include at
21 least 30 percent of the total units for lower income households, at
22 least 15 percent for very low income households, or at least 30
23 percent for persons and families of moderate income in a common
24 interest development.

25 (3) The applicant may initiate judicial proceedings if the city,
26 county, or city and county refuses to grant a requested density
27 bonus, incentive, or concession. If a court finds that the refusal to
28 grant a requested density bonus, incentive, or concession is in
29 violation of this section, the court shall award the plaintiff
30 reasonable attorney's fees and costs of suit. Nothing in this
31 subdivision shall be interpreted to require a local government to
32 grant an incentive or concession that has a specific, adverse impact,
33 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
34 upon health, safety, or the physical environment, and for which
35 there is no feasible method to satisfactorily mitigate or avoid the
36 specific adverse impact. Nothing in this subdivision shall be
37 interpreted to require a local government to grant an incentive or
38 concession that would have an adverse impact on any real property
39 that is listed in the California Register of Historical Resources.
40 The city, county, or city and county shall establish procedures for

1 carrying out this section, that shall include legislative body
2 approval of the means of compliance with this section.

3 (e) (1) In no case may a city, county, or city and county apply
4 any development standard that will have the effect of physically
5 precluding the construction of a development meeting the criteria
6 of subdivision (b) at the densities or with the concessions or
7 incentives permitted by this section. An applicant may submit to
8 a city, county, or city and county a proposal for the waiver or
9 reduction of development standards that will have the effect of
10 physically precluding the construction of a development meeting
11 the criteria of subdivision (b) at the densities or with the
12 concessions or incentives permitted under this section, and may
13 request a meeting with the city, county, or city and county. If a
14 court finds that the refusal to grant a waiver or reduction of
15 development standards is in violation of this section, the court
16 shall award the plaintiff reasonable attorney's fees and costs of
17 suit. Nothing in this subdivision shall be interpreted to require a
18 local government to waive or reduce development standards if the
19 waiver or reduction would have a specific, adverse impact, as
20 defined in paragraph (2) of subdivision (d) of Section 65589.5,
21 upon health, safety, or the physical environment, and for which
22 there is no feasible method to satisfactorily mitigate or avoid the
23 specific adverse impact. Nothing in this subdivision shall be
24 interpreted to require a local government to waive or reduce
25 development standards that would have an adverse impact on any
26 real property that is listed in the California Register of Historical
27 Resources, or to grant any waiver or reduction that would be
28 contrary to state or federal law.

29 (2) A proposal for the waiver or reduction of development
30 standards pursuant to this subdivision shall neither reduce nor
31 increase the number of incentives or concessions to which the
32 applicant is entitled pursuant to subdivision (d).

33 (f) For the purposes of this chapter, "density bonus" means a
34 density increase over the otherwise maximum allowable residential
35 density as of the date of application by the applicant to the city,
36 county, or city and county. The applicant may elect to accept a
37 lesser percentage of density bonus. The amount of density bonus
38 to which the applicant is entitled shall vary according to the amount
39 by which the percentage of affordable housing units exceeds the
40 percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6

1	12	7
2	13	8
3	14	9
4	15	10
5	16	11
6	17	12
7	18	13
8	19	14
9	20	15
10	21	16
11	22	17
12	23	18
13	24	19
14	25	20
15	26	21
16	27	22
17	28	23
18	29	24
19	30	25
20	31	26
21	32	27
22	33	28
23	34	29
24	35	30
25	36	31
26	37	32
27	38	33
28	39	34
29	40	35
30		

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase

above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

1 (B) The developable acreage and zoning classification of the
2 land being transferred are sufficient to permit construction of units
3 affordable to very low income households in an amount not less
4 than 10 percent of the number of residential units of the proposed
5 development.

6 (C) The transferred land is at least one acre in size or of
7 sufficient size to permit development of at least 40 units, has the
8 appropriate general plan designation, is appropriately zoned with
9 appropriate development standards for development at the density
10 described in paragraph (3) of subdivision (c) of Section 65583.2,
11 and is or will be served by adequate public facilities and
12 infrastructure.

13 (D) The transferred land shall have all of the permits and
14 approvals, other than building permits, necessary for the
15 development of the very low income housing units on the
16 transferred land, not later than the date of approval of the final
17 subdivision map, parcel map, or residential development
18 application, except that the local government may subject the
19 proposed development to subsequent design review to the extent
20 authorized by subdivision (i) of Section 65583.2 if the design is
21 not reviewed by the local government prior to the time of transfer.

22 (E) The transferred land and the affordable units shall be subject
23 to a deed restriction ensuring continued affordability of the units
24 consistent with paragraphs (1) and (2) of subdivision (c), which
25 shall be recorded on the property at the time of the transfer.

26 (F) The land is transferred to the local agency or to a housing
27 developer approved by the local agency. The local agency may
28 require the applicant to identify and transfer the land to the
29 developer.

30 (G) The transferred land shall be within the boundary of the
31 proposed development or, if the local agency agrees, within
32 one-quarter mile of the boundary of the proposed development.

33 (H) A proposed source of funding for the very low income units
34 shall be identified not later than the date of approval of the final
35 subdivision map, parcel map, or residential development
36 application.

37 (h) (1) When an applicant proposes to construct a housing
38 development that conforms to the requirements of subdivision (b)
39 and includes a child care facility that will be located on the

premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) “Child care facility,” as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in

subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section shall not be construed to supersede or in any way alter or lessen the effect or application of the California

1 Coastal Act of 1976 (Division 20 (commencing with Section
2 30000) of the Public Resources Code).

3 (n) If permitted by local ordinance, nothing in this section shall
4 be construed to prohibit a city, county, or city and county from
5 granting a density bonus greater than what is described in this
6 section for a development that meets the requirements of this
7 section or from granting a proportionately lower density bonus
8 than what is required by this section for developments that do not
9 meet the requirements of this section.

10 (o) For purposes of this section, the following definitions shall
11 apply:

12 (1) "Development standard" includes a site or construction
13 condition, including, but not limited to, a height limitation, a
14 setback requirement, a floor area ratio, an onsite open-space
15 requirement, or a parking ratio that applies to a residential
16 development pursuant to any ordinance, general plan element,
17 specific plan, charter, or other local condition, law, policy,
18 resolution, or regulation.

19 (2) "Maximum allowable residential density" means the density
20 allowed under the zoning ordinance and land use element of the
21 general plan, or if a range of density is permitted, means the
22 maximum allowable density for the specific zoning range and land
23 use element of the general plan applicable to the project. Where
24 the density allowed under the zoning ordinance is inconsistent
25 with the density allowed under the land use element of the general
26 plan, the general plan density shall prevail.

27 (p) (1) Upon the request of the developer, no city, county, or
28 city and county shall require a vehicular parking ratio, inclusive
29 of handicapped and guest parking, of a development meeting the
30 criteria of subdivision (b), that exceeds the following ratios:

31 (A) Zero to one bedroom: one onsite parking space.

32 (B) Two to three bedrooms: two onsite parking spaces.

33 (C) Four and more bedrooms: two and one-half parking spaces.

34 (2) If the total number of parking spaces required for a
35 development is other than a whole number, the number shall be
36 rounded up to the next whole number. For purposes of this
37 subdivision, a development may provide "onsite parking" through
38 tandem parking or uncovered parking, but not through onstreet
39 parking.

1 (3) This subdivision shall apply to a development that meets
2 the requirements of subdivision (b) but only at the request of the
3 applicant. An applicant may request parking incentives or
4 concessions beyond those provided in this subdivision pursuant
5 to subdivision (d).

6 ~~SECTION 1. It is the intent of the Legislature to enact~~
7 ~~legislation relating to the provision of density bonuses with respect~~
8 ~~to housing developments.~~